

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1573 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

No.1 and 3 to 5 No. No.2 Yes.

AMRATLAL PANDU PATIL

Versus

VASANTLAL MOTILAL

Appearance:

MR VM TRIVEDI for Petitioner

MR AVINASH K MANKAD for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 27/07/98

ORAL JUDGEMENT

This is tenant's revision under section 29(2) of the Bombay Rent Act. The facts giving rise to this revision are shortly as under.

The tenanted room was let out by the respondent to the revisionist on monthly rent of Rs.32/-. The revisionist fell in arrears of rent for more than six months with effect from 1.9.1975. Notice of demand dated 15.11.1976 was sent which was served on the tenant. The suit for eviction was filed only on the ground of tenant's failure to pay rent due from him within statutory period.

The revisionist contested the suit raising dispute of standard rent. In the reply notice also dispute of standard rent was raised by him. According to the revisionist the standard rent could not be more than Rs.5/-p.m. Rent was deposited by the tenant and he claimed protection of section 12(3)(b) of the Rent Act.

The Trial Court found that the dispute of the standard rent raised by the tenant was bonafide. The Trial Court fixed the standard rent to be Rs.20/- p.m. calculated at this rate the rent deposited by the tenant revisionist was found to be in excess of the demand made by the landlord. Statutory protection under section 12(3)(b) of the Act, was therefore granted by the Trial Court to the revisionist. The suit for eviction was dismissed.

An appeal was preferred. The Appellate Court disagreeing with the finding of the Trial Court observed that protection of section 12(3)(b) of the Act could not be afforded to the tenant in as much as he failed to make regular deposit of rent in Court. The suit for eviction was therefore decreed. It is how the tenant has come up in revision before this Court.

Having heard learned Counsel for the revisionist and examining the judgments of the two Courts below I am of the view that the judgment and decree of the lower Appellate Court is contrary to law as well as to the facts and is also suffering from self contradictions.

Self contradiction in the judgment was that the lower Appellate Court itself observed that it did not find any reason to disturb the finding regarding regularisation of deposit of rent which was within the discretion of the Trial Court. In spite of this observation, the lower Appellate Court again entered into unnecessary exercise to find out whether default in

depositing the rent was committed by the tenant or not. Judgment of the Trial Court was delivered on 23.7.1980. The lower Appellate Court itself found that the amount of arrears of rent upto the date of judgment was Rs.1160/only whereas the tenant had deposited till this date a sum of Rs.1300/-. The lower Appellate Court observed that this amount was paid in advance. It further observed that the amount deposited upto 15.10.1980 was found to cover rent upto July,1981. Still at other place it observed that there is no regular deposit of rent after 1.5.1980. If in the opinion of the lower Appellate Court the rent deposited upto 15.10.1980 was to cover the period upto July, 1981 the tenant was not obliged to make regular deposit after 1.5.1980 despite the fact that he had already deposited excess amount of rent in Court. Besides these factual contradictions there is legal contradiction also in the judgment of the lower Appellate Court. Once having agreed with the finding of the Trial Court that section 12(3)(a) did not apply in the instant case, it still observed that it will have to be considered whether in this case the provision contained in section 12(3)(a) of the Bombay Rent Act, will apply and even if the provision contained in section 12(3)(b) apply whether this is a case of regular deposit in compliance of the orders of the Court. These two contradictions in law cannot be reconciled. The landlord came with the specific case under section 13(3)(a) of the Act by alleging that the tenant failed to pay arrears of rent within a month of service of notice of demand. However, in order to attract the provision of section 12(3)(a) the landlord has to establish that there was no dispute regarding standard rent. Dispute regarding standard rent was raised in this case by the tenant revisionist as early as in his reply notice given within a month of service of notice of demand. Notice of demand was dated 15.11.1976 which was served on 20.11.1976. The reply notice exhibit 31 is dated 10.12.1976. The dispute regarding standard rent was also raised in the written statement. The Trial Court found that this dispute regarding standard rent was bonafide and not malafide. The Appellate Court has not disturbed this finding recorded by the Trial Court. Further, the Trial Court itself did not agree with the agreed rent of Rs.32/- p.m. charged by respondent and it interfered and fixed Rs.20/_p.m. as standard rent. These facts leave no room for doubt that the dispute regarding standard rent raised by the revisionist was bonafide. This bonafide dispute was resolved during the pendency of the suit and as such the case fall out of the mischief of section 13(3)(a) of the Act, hence no decree for eviction could be passed under this section.

It is not a case of the landlord that eviction was sought under section 12(3)(b) of the Act. Section 12(3)(b) opens with the words "in any other case, no decree for eviction shall be passed in any such suit if, on the first day of hearing of the suit or on or before such other date as the court may fix, the tenant pays or tenders in Court the standard rent and permitted increases then due...." This, therefore, means that the provisions of section 12(3)(b) could be applied by the landlord only when section 12(3)(a) did not apply but the alternative relief under section 12(3)(b) was not claimed by the landlord. His case was specific that his case was under section 12(3)(a) of the Act. Consequently abruptly the decree for eviction under section 12(3)(b) could not be passed by the lower Appellate Court.

Further, in view of the inherent and apparent contradictions pointed out in the foregoing paras of the judgment it appears that the lower Appellate Court was of the view that the tenant is not entitled to claim adjustment of excess rent deposited in the Court and it is his obligation to go on depositing the rent regularly in Court no matter, he has deposited earlier the rent much in excess of what was required to be deposited by him. This view of the lower Appellate Court is again contrary to law. If the tenant deposited rent in Court Rs. 32/- p.m. for certain period and if the Trial Court fix standard rent at Rs.20/- p.m. then tenant was entitled to claim adjustment of excess deposit and he was not obliged to deposit the rent regularly ignoring his excess deposit made earlier. Even after fixing the standard rent the Trial Court did not think it proper to give any other date to the tenant for making statutory compliance of section 12(3)(b) because it found that the rent deposited was already in excess of the required deposit. Still insistence of the lower Appellate Court that the tenant should deposit rent regularly is nothing but a view not only erroneous but contrary to law.

To conclude therefore it can be said that if the case did not fall within the ambit of section 12(3)(a) of the Act, the decree for eviction against the tenant could not be passed. Since the alternative case claiming decree for eviction under section 12(3)(b) was not set up by the landlord in the plaint he was not entitled to decree for eviction under this section. In the last, the tenant having made statutory compliance of the requirements of

section 12(3)(b) of the Act could not be evicted and in this view of the matter also decree for eviction passed by the lower Appellate Court is contrary to law. The revision in these circumstances has to be allowed.

The revision is hereby allowed. Judgment and Decree of the lower Court are set aside. Parties shall bear their own costs.

Sd/-

(D.C.Srivastava, J.)

m.m.bhatt